IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 899 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANILAL VALLABHDAS DAVADA

Versus

BHAGWANDAS PARSOTTAMDAS

Appearance:

1. Civil Revision Application No. 899 of 1986
Petitioners served.
Mr.Praful Thakker for Mr.Arun H.Mehta for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/10/2002

ORAL JUDGEMENT

This Revision Application preferred under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947 (hereinafter referred to as 'the Rent Act') arises from the judgment and order dated 18th January, 1986 passed by the learned Assistant Judge, Porbandar in Regular Civil Appeal No.46/1983. The petitioner before this Court is the respondent - defendant.

The premises in question is a residential house block no.8 bearing Municipal Census No.7-6-13 situated at Porbandar. The respondent herein (hereinafter referred to as 'the plaintiff') instituted Regular Civil Suit No.62/1980 in the Court of Civil Judge (S.D.), Porbandar. The plaintiff claimed that the suit premises was leased to the late father of the defendant for a monthly rent of Rs.12=50. After the death of his father, the tenancy was transmitted to the defendant. The defendant was using the suit premises for his residence. However, for six months and more preceding the date of the suit, the defendant had ceased to use the suit premises for his residence. The defendant had acquired another residential accommodation at a place known as 'Thakkar Plot'. Hence, the plaintiff claimed recovery of possession of the suit premises on the grounds of non-user under Section 13(1)(k) of the Rent Act and; of acquisition of alternative suitable accommodation by the defendant under Section 13(1)(l) of the Rent Act. The learned trial Judge, under the judgment and order dated 6th September, 1983, was pleased to hold that the plaintiff had failed to prove either of the grounds on which the eviction was sought. The learned trial Judge, therefore, dismissed the suit.

Feeling aggrieved, the plaintiff preferred Regular Civil Appeal No.46/1983 in the Court of District Judge, Porbandar. The said appeal was allowed by the learned Assistant Judge, Porbandar, under the impugned judgment and order dated 18th January, 1986. Feeling aggrieved, the defendant has preferred the present Revision Application.

In the present case, the plaintiff had claimed recovery of possession both on the grounds of non-user of the suit premises for the purpose for which it was leased and the acquisition of suitable residential accommodation by the defendant. The acquisition of suitable residential accommodation by the defendant was not believed by the trial Court and the appellate Court as well. The plaintiff did not pursue the matter further. The issue, therefore, has reached finality and does not require to be dealt with.

As for the non-user of the suit premises, without reasonable cause, it is an admitted fact that the suit premises was leased for residential purpose. The defendant has admitted that he has shifted his residence to the premises acquired by him in 'Thakkar Plot'. He, however, stated that the suit premises was being occasionally used by his children for study and for the lodging of his guests. The plaintiff produced the registers maintained by the Gujarat Electricity Board and the Porbandar Municipality with respect to the use of electricity and water in the suit premises. It has been proved that for a period of one year preceding the date of the suit the electric consumption in the suit premises is almost nil i.e. only three units of electricity has been used over a period of three months. Even the water consumption during the relevant period has been shown to be nil. Inspite of this evidence, the learned trial Judge was of the opinion that as admitted by the defendant, the defendant had shifted his residence to the 'Thakkar Plot' premises for some 12 years. The plaintiff, therefore, was not right in contending that the defendant had ceased to use the suit premises for residential purpose for one year prior to the date of the suit. Besides, what weighed with the learned trial Judge was the consumption of three units of electricity, which, according to the learned trial Judge supported the claim of the defendant that the suit premises was occasionally used by his children for study and for lodging of his guests.

The Court below, however, on appreciation of this evidence came to the conclusion that the suit premises was not being used for the purpose for which it was leased i.e. for residence. The Court below has further held that the defendant has failed to prove that the suit premises was not used for reasonable cause. The Court below, therefore, proceeded to pass decree for eviction on the ground of non-user of the suit premises for the purpose for which it was leased, without reasonable cause.

To me it appears that the reasoning adopted by the learned trial Judge is not sustainable. The Court below has rightly appreciated the evidence on record and has rightly recorded the finding that the defendant had put the suit premises to non-user without reasonable cause. Even if it were believed that the suit premises was occasionally used by the children of the defendant for their study or for the lodging of their guests, it can not be said that the defendant has been using the suit premises for the purpose for which it was leased.

The learned advocate Mr.Thakker appearing for the respondent has relied upon the judgment of this Court in the matter of KHEMCHAND KALIDAS MEHTA V/S. KOTHARI GUBHARUCHAND MOTILAL [1996(2) G.L.R. 404]. In paragraph 11 of the judgment, the Court has observed that "...Where the premises are let for residence and there is continuous non-user, for years together, mere casual visit to the premises would not render the non-user as non-continuous. Constructive residence may not help the tenant. What is contemplated by the provisions of Section 13(1)(k) is the actual residence. Even if the plea of the tenant is accepted on its face value that he has been making spasmodic or casual visits to the premises, then also in the present case, it could not be said to be a regular or actual user for residence which is the lynchpin of the provisions of Section 13(1)(k) of the Bombay Rent Act." The Court has also held that onus of proof of non-user of the suit premises for a continuous period of six months and more lies on the plaintiff. However, once it is established the onus shifts to the tenant and it is he who has to show that there is a reasonable cause for the non-user. In the present case, the non-user of the suit premises has been admitted by the defendant. The fact that the suit premises has been put to non-user for 12 years and not just one year as claimed by the plaintiff, shall not tilt the balance in favour of the tenant. The defendant has not come out with any reason for which he has not been using the suit premises for his residence. The claim of occasional use made by the defendant is also not proved, but even though accepted, in view of the above referred judgment of this Court, the same would not save the defendant from the decree for eviction. No other question arises in this Revision.

For the above reasons, the Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

(Ms. R.M. Doshit, J.)

/sakkaf